

**THE ALABAMA PREPAID AFFORDABLE COLLEGE TUITION PROGRAM
CALLED MEETING OF THE BOARD OF DIRECTORS
May 4, 2011**

MINUTES

Present:

Treasurer Young Boozer, Chair
Dr. Greg Fitch
Ms. Karen Gandy
Ms. Leigh Grogan for Chancellor Freida Hill
Mr. Marc Green
General Paul Hankins, Vice Chair
Dr. Richard Huckaby
Ms. Patti Lambert
Dr. William Meehan
Mr. David Perry
Mr. Mark Sullivan

Absent:

Ms. Gwen Appling
Sen. Roger Bedford
Rep. Craig Ford
Mr. Jimmy Stubbs

Others present include:

Ms. Glenda Allred, Deputy Treasurer
Ms. Daria Story, Assistant Treasurer
Ms. Gina Smith, Assistant to the Treasurer
Ms. Brenda Emfinger, College Savings Programs Director
Mr. George Beck, Capell & Howard
Mr. Chad Bryan, Capell & Howard
Mr. Bill Garrett, Attorney General's Office
Mr. Matt Bledsoe, Attorney General's Office

Agenda Item I.

Pursuant to written and public notice, a special called meeting of the Board of Directors of the PACT Program was held in the Board Room of the RSA Headquarters on May 4, 2011. The meeting was called to order by Chairman Young Boozer at 2:05 p.m. Roll was taken with a quorum present.

Agenda Item II.

Chairman Boozer presented the minutes of the February 23, 2011 board meeting. A motion was made by General Hankins, seconded by Dr. Meehan for approval as presented. The motion was unanimously approved.

Agenda Item III.

Chairman Boozer asked for consideration of an executive session to discuss the pending PACT lawsuit. A motion was made by Dr. Meehan, seconded by Vice Chair Hankins to enter executive session to discuss pending litigation. Mr. Beck provided an oral declaration that the purpose of the session was warranted, and advised that no deliberations could be made during the session. A voice vote was recorded with every member consenting and a majority declared. The Board entered Executive Session at 2:10 p.m. Chairman Boozer stated that the session was expected to last approximately one hour and the board would reconvene in the open meeting.

Agenda Item IV. (a.)

The Board reconvened at 3:25 p.m. Chairman Boozer updated the members on events since the last board meeting. As directed by the Board, Chairman Boozer and Vice Chair Hankins met with Dr. Jay Gouge, President of Auburn University, and Dr. Malcolm Portera, Chancellor of the University of Alabama System, to request that the two universities limit tuition increases for PACT students. Each declined. Prior to the meeting with Auburn and Alabama, Chairman Boozer and Vice Chair Hankins met with Governor Bentley and members of the leadership of the Legislature to update them on the current status of PACT. Additionally, Chairman Boozer stated that he had discussed the possibility of additional financial assistance with the leadership of the Legislature. While no additional funding is available, there is a strong intent to honor the funds committed in Act 2010- 725. He added that a bill had also been introduced in the Legislature to remove the cap on tuition at the regional institutions. The Court ordered mediation in the lawsuit and these developments resulted in a unique opportunity to settle the lawsuit and to strike a settlement agreement.

Chairman Boozer then reviewed with the Board each element of the proposed settlement, which is attached for reference. Chairman Boozer summarized by stating that the settlement provided PACT beneficiaries the maximum benefits from the available assets, and then asked PACT attorney George Beck to review the schedule and timeline of the settlement process. Mr. Beck explained the concept of a class action lawsuit and differentiated the PACT class action. He stated that the classes had been combined and no member of the class could opt out. He stated that the agreement had been approved by Attorney General Luther Strange. If the board approved it, the agreement would be taken to the court for a preliminary order entered to set a fairness hearing. Class members would be given the opportunity to object by submitting written notice. He then reviewed the timeline for court approval, stating that he was hopeful that a final order could be issued by August in time for fall 2011 implementation.

Agenda Item IV. (b.)

Chairman Boozer then discussed with the board a financial report provided by Buck Consultants. The report incorporated the terms of the settlement in projecting future liabilities against the projected assets. The purpose of the report was to illustrate the viability of the agreement and the impact of delayed implementation, restructured cash flow and possible increases in the baseline tuition/fee payment. Based on the assumptions used, the settlement is financially viable.

Agenda Item IV. (c.)

Chairman Boozer then asked for consideration of a Resolution approving the settlement agreement. Vice Chair Hankins made a motion to adopt the resolution approving the proposed settlement and authorizing Chairman Boozer to execute the agreement and bind the board. It was seconded by Dr. Meehan and Mr. Boozer called for discussion. Dr. Huckaby asked for confirmation that the \$548 million appropriated in Act 2010-725 could be relied upon and was a basis for the settlement. Mr. Boozer stated that the leadership of the Legislature had stated they support honoring the commitment, and that the monies are a basis of the settlement. Ms. Lambert then stated that without additional funding, the program can not be sustained. Vice Chair Hankins expressed his appreciation to all involved in the deliberations and negotiations with special thanks to Chairman Boozer for timely and proactive leadership.

By unanimous vote, the resolution was approved and is attached for reference.

Agenda Item IV. (d.)

Chairman Boozer then discussed with the board the consideration of waiving the \$75 cancellation fee for purchasers who choose to cancel given that the settlement agreement modifies the benefit payments. He explained that cancellation would be a personal financial decision for each purchaser, with some concluding that it was best to cancel and invest alternatively. After discussion, Dr. Fitch made a motion to waive the cancellation fee through September 30, 2011. With a second from Dr. Meehan, the motion was unanimously approved.

Agenda Item V.

Chairman Boozer called on Ms. Emfinger for a discussion of the actuarial assumption report. Ms. Emfinger explained that Buck Consultants, the Actuary, had proposed changes to the actuarial assumptions used in the December 31, 2010 report to comply with the terms of the settlement for inclusion in the March quarterly valuation. She then reviewed each assumption as proposed by the actuary. A motion was then made by Vice Chair Hankins and seconded by Dr. Fitch for approval of the proposed assumptions as presented. The motion unanimously carried and the report is attached for reference.

There being no further business, a motion was made by Dr. Meehan and seconded by Vice Chair Hankins to adjourn. The meeting was adjourned at 4:25.

**Adopted Resolution by the
PACT Board of Trustees at its meeting on May 4, 2011
Topic: Settlement in the *Green v Ivey* litigation**

WHEREAS, the Legislature has created the Wallace-Folsom College Savings Investment Plan pursuant to Title 16, Chapter 33C of the *Code of Alabama*, 1975; and,

WHEREAS, the Board of Trustees (the "PACT Board") is created and charged with the oversight of the PACT Trust Fund by Section 16-33C-4, including those powers enumerated in Section 16-33C-5(1)-(12); and,

WHEREAS, a lawsuit styled *Lisa Nix Green, et al. v. Kay Ivey, et al.* is presently pending in the Circuit Court of Montgomery County, Alabama as case number CV-2010-900013 (the "Lawsuit"); and

WHEREAS, the Lawsuit was filed against the members of the PACT Board in their official capacities and sought relief on both an individual and class basis as to the interpretation and enforcement of PACT Contracts; and

WHEREAS, the PACT Board filed a counterclaim to seek instructions and guidance on the respective rights and duties under PACT Contracts; and

WHEREAS, by order dated December 13, 2010 and amended March 4, 2011, the court determined that all PACT purchasers and beneficiaries are members of either Class A (including subclasses thereof) and Class B thereby rendering the Lawsuit a class action; and,

WHEREAS, the court ordered the parties to enter mediation which was held on April 14, 2011 and resulted in a proposed Class Action Settlement Agreement designed to provide PACT purchasers and beneficiaries the maximum amount of benefits from the available assets; and,

WHEREAS, the Board at a special called meeting on May 4, 2011 reviewed and discussed the terms of the Settlement Agreement;

NOW THEREFORE BE IT RESOLVED, that the Board approves the terms of the Class Action Settlement Agreement attached hereto. The Board hereby authorizes the Chairman, Young Boozer, to sign the Class Action Settlement Agreement on behalf of the Board and to bind the Board to the terms thereof.